



January 31, 2002

## HOUSE BILL No. 1316

DIGEST OF HB 1316 (Updated January 30, 2002 9:34 AM - DI 94)

**Citations Affected:** IC 36-7.

**Synopsis:** Public improvement areas. Authorizes counties, cities, and towns to establish public improvement areas for the purpose of imposing assessments against real property to provide funding for infrastructure. Establishes procedures for hearings on the establishment of a special service area and for computation of assessments against real property. Establishes procedures for objecting to the establishment of the area or the initial computation of assessments. Provides that money raised by the assessments may be used to pay debt service on bonds or lease rentals under leases.

**Effective:** Upon passage.

**Liggett, Scholer**

January 15, 2002, read first time and referred to Committee on Local Government.  
January 30, 2002, reported — Do Pass.

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HB 1316—LS 7054/DI 44+



January 31, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## HOUSE BILL No. 1316

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-7-32 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON  
3 PASSAGE]:

4       **Chapter 32. Public Improvement Areas**

5       **Sec. 1. This chapter applies to all units except townships.**

6       **Sec. 2. The definitions in IC 36-1-2 apply throughout this**  
7 **chapter.**

8       **Sec. 3. As used in this chapter, "infrastructure" includes:**

- 9       (1) roads;  
10       (2) streets;  
11       (3) sidewalks;  
12       (4) curbs;  
13       (5) alleys;  
14       (6) common areas;  
15       (7) parking areas;  
16       (8) lighting;  
17       (9) electric signals;

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(10) landscaping, including trees, shrubbery, flowers, grass, fountains, benches, statues, floodlighting, gas lighting, and structures of a decorative nature;

(11) sanitary sewers and sanitary sewer tap-ins;

(12) storm water sewers and drains; and

(13) waterworks facilities, including water towers, water main extensions, and tap-ins;

that serve or benefit a public improvement area created under this chapter. The term also includes the right of way for the infrastructure and the acquisition of property necessary for the development of the infrastructure.

Sec. 4. (a) The legislative body of a unit may establish a public improvement area for the purpose of providing infrastructure in a residential development in order to:

(1) benefit the public health, safety, morals, and welfare;

(2) increase the economic well-being of the unit and the state; and

(3) protect and increase property values in the unit and the state.

(b) Providing infrastructure in a residential development is a public use and purpose for which public money may be spent and property may be acquired.

Sec. 5. (a) All of the real property within a public improvement area constitutes a special taxing district for the purpose of the special assessments to be apportioned, levied, and collected as provided in this chapter. All of the real property within a public improvement area is considered to be benefitted by the infrastructure developed under this chapter to the extent of the special assessments apportioned, levied, and collected under this chapter.

(b) The amount of the assessment levied on a parcel must bear a reasonable relationship to the benefits accruing to the parcel. The assessments may be apportioned among the parcels in the public improvement area in any manner reasonably representative of the benefits accruing to a parcel from the infrastructure, including the following:

(1) Assessed value or market value of the parcel.

(2) Assessed value or market value of any improvement on the parcel.

(3) Size of any improvement on the parcel.

(4) Size of the parcel.

(5) Any other similar factors, as determined under the



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ordinance adopted under section 9 of this chapter.

(c) The unit may retain or employ qualified personnel or other consultants to develop the formula for determining the percentage of the total benefit accruing to each parcel of real property within the proposed public improvement area and the method for apportioning the assessments to be levied on the real property in the proposed public improvement area.

Sec. 6. Notwithstanding any other law, the unit may negotiate wages and the cost of constructing the infrastructure that serves the public improvement area.

Sec. 7. (a) The legislative body of a unit:

(1) may, on its own motion; or

(2) shall, if a verified petition for the establishment of a public improvement area is filed by fifty-one percent (51%) of the owners of real property in the proposed public improvement area;

hold a hearing on the establishment of a public improvement area.

(b) A petition requesting the establishment of a public improvement area must include the following information:

(1) The boundaries of the proposed public improvement area.

(2) The names and addresses of the owners of real property within the proposed public improvement area.

(3) A detailed description of the infrastructure to be developed to serve the proposed public improvement area and the estimated cost of the infrastructure to be developed.

(4) The plan for the application of assessment revenue to the cost of the infrastructure to be developed to serve the proposed public improvement area.

(5) The proposed formula for determining the percentage of the total benefits accruing to each parcel of real property within the proposed public improvement area and the method for apportioning the assessments to be levied on the real property in the proposed public improvement area.

(6) The estimated number of years that assessments will be levied.

Sec. 8. (a) After adoption of a motion or receipt of a petition under section 7 of this chapter, the legislative body shall:

(1) publish notice of a hearing on the proposed public improvement area, one time, in accordance with IC 5-3-1; and

(2) mail a copy of the notice to each owner of real property within the proposed public improvement area;

at least ten (10) days before the hearing.

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(b) The notice required by subsection (a) must include:

- (1) a description of the boundaries of the proposed public improvement area;
- (2) a description, including cost estimates, of the proposed infrastructure to be developed to serve the public improvement area;
- (3) a summary of the plan for the application of assessment revenue to the cost of the infrastructure to be developed to serve the proposed public improvement area;
- (4) the proposed formula for determining the percentage of the total benefits accruing to each parcel of real property in the public improvement area;
- (5) the date, time, and location of the hearing; and
- (6) a statement that, at the time fixed for the public hearing, the legislative body will receive and hear remonstrances and objections from persons interested in or affected by the proceedings pertaining to the establishment of the proposed public improvement area and will determine the public utility and benefit of the establishment of the public improvement area and the development of the infrastructure.

(c) All taxpayers and owners of real property within the proposed public improvement area shall be considered notified of the pendency of the hearing and of subsequent acts, hearings, adjournments, and proceedings of the legislative body by the notice given under this section.

(d) At the public hearing, which may be adjourned from time to time, the legislative body shall hear all persons interested in the proceedings and shall consider all written remonstrances and objections that have been filed on the questions of:

- (1) the sufficiency of the notice;
- (2) whether the proposed infrastructure project will be of public utility and benefit; and
- (3) whether the proposed assessment formula is appropriate.

Sec. 9. (a) After conducting the public hearing, the legislative body, in accordance with IC 5-3-1, shall give notice of the right of property owners within the proposed public improvement area to sign a petition opposing the establishment of the public improvement area. A petition opposing the establishment of the proposed public improvement area may be filed with the county auditor not more than twenty (20) days after the notice is given. The following provisions apply if a petition opposing the establishment of the proposed public improvement area is filed and

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is signed by at least fifty-one percent (51%) of the owners of real property in the proposed public improvement area:

(1) The proceedings for the establishment of the proposed public improvement district are terminated.

(2) Beginning one (1) year after the filing of the petition under this subsection, the legislative body may again begin proceedings to establish the same proposed public improvement area. Before establishing the proposed public improvement area, the legislative body must comply with the requirements of this section and section 8 of this chapter and this subsection. Establishment of the proposed public improvement area is subject to the petition procedure established by this subsection.

(b) If a petition opposing the establishment of a public improvement area is not filed within the time specified in subsection (a), or if a petition filed under subsection (a) is not signed by at least fifty-one percent (51%) of the owners of real property in the proposed public improvement area, the legislative body, after weighing all the evidence, may adopt an ordinance establishing the public improvement area if it determines that:

(1) the infrastructure to be developed will provide benefit to the owners of real property in the public improvement area and will be of public utility and benefit; and

(2) the apportionment of the assessments is appropriate and bears a reasonable relationship to the benefits to be provided.

(c) An ordinance adopted under this section must include:

(1) the boundaries of the public improvement area;

(2) the formula for determining the percentage of the total benefits accruing to each parcel of real property within the public improvement area and for apportioning the assessments to be levied and collected; and

(3) the estimated number of years that assessments will be levied.

(d) A copy of an ordinance adopted under this section, certified by the unit's clerk, shall be recorded in the office of the recorder of each county in which all or a part of the public improvement area is located.

**Sec. 10.** The legislative body must conduct a public hearing before amending or repealing an ordinance establishing a public improvement area. The legislative body shall give notice of the hearing in accordance with IC 5-3-1. The notice must:

(1) set forth the substance of the proposed amendment;



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- (2) state the time and place where written remonstrances against the proposed amendment may be filed;
- (3) set forth the time and place of the hearing; and
- (4) state that the legislative body will hear any person who has filed a written remonstrance during the filing period set forth under subdivision (2).

Sec. 11. (a) Using the formula established for determining the percentage of the total benefit accruing to each parcel of real property within the public improvement area and for apportioning the assessments to be levied and collected as set forth in the ordinance establishing the public improvement area, the fiscal officer shall annually determine the proposed assessment for each parcel of real property in the public improvement area and prepare a schedule of the assessments.

(b) The fiscal officer shall:

- (1) certify the schedule of assessments prepared under subsection (a) to the auditor of each county in which all or a part of the public improvement area is located;
- (2) file a copy of the schedule of assessments prepared under subsection (a) in the office of the recorder of each county in which all or a part of the public improvement area is located; and
- (3) maintain one (1) copy in the office of the fiscal officer of the unit, which must be available for inspection during business hours.

(c) Within ten (10) days after certifying the initial schedule of assessments to the county auditor, the fiscal officer of the unit shall mail notice to each owner of real property to be assessed. The notice to each owner of real property must be addressed as the name and address appear on the tax duplicates and the records of the auditor of the county in which the real property is located. The notice must:

- (1) set forth the amount of the proposed assessment; and
- (2) state that a copy of the schedule containing the proposed assessment on each parcel of real property in the public improvement area is on file and can be seen in the office of the fiscal officer of the unit.

Sec. 12. (a) Within ten (10) days after the county auditor receives the annual certification of the schedule of assessments for the public improvement area, the auditor shall deliver a copy of the certificate to the county treasurer. Each year, the treasurer shall add the full annual assessment due in that year to the tax



statements of the person owning the property affected by the assessment, designating it in a manner distinct from general taxes.

(b) Assessments for benefits under this chapter are a lien upon each parcel of real property against which the benefits are assessed. The lien attaches at the time the schedule of assessments is filed with the county recorder. A lien under this chapter has equal priority with tax liens and is superior to all other liens. The lien may be foreclosed upon entry of a judgment on the lien and the real property sold on execution under IC 34-55-6. Upon the sale, the proceeds shall be prorated equally among the assessment and any delinquent taxes. A sale for a delinquent tax or delinquent assessment does not extinguish the assessment.

(c) Assessments collected under this chapter shall be paid to the unit's fiscal officer at the same time and in the same manner as the county treasurer distributes property taxes under IC 6-1.1-27.

Sec. 13. (a) The fiscal officer shall establish a public improvement area fund and shall deposit in this fund all revenues received from assessments levied and collected under this chapter.

(b) All investment earnings from money in the fund shall remain a part of the fund.

(c) Money in the fund shall be used by the unit for the financing, acquisition, construction, operation, or maintenance of infrastructure and for the administration of the public improvement area.

(d) If a unit does not have authority to operate a particular type of infrastructure for which an assessment has been levied and collected under this chapter, the unit shall:

(1) enter into an agreement with a governmental entity that has authority to operate the infrastructure, establishing the terms and conditions under which the infrastructure will be developed and financed; and

(2) if the governmental entity will finance the development of the infrastructure in accordance with an agreement described in subdivision (1), transfer, at least semiannually, revenues from the assessments levied and collected under this chapter that are attributable to that infrastructure.

(e) A governmental entity that has entered into an agreement under subsection (d) may use assessment revenues to develop any infrastructure permitted under this chapter for which the governmental entity is authorized to issue bonds or to enter into leases under any statute. A governmental entity may pledge assessment revenues received under an agreement described in



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subsection (d).

**Sec. 14. (a) The unit may issue bonds, enter into leases, or incur other obligations to:**

- (1) pay any costs associated with the infrastructure to be developed;**
- (2) reimburse the unit for any money advanced to pay those costs;**
- (3) refund bonds issued or other obligations incurred under this chapter;**
- (4) fund a debt service reserve fund;**
- (5) pay capitalized interest on any bonds issued or obligations incurred under this chapter; and**
- (6) pay the cost of issuing the bonds or other obligations incurred under this chapter.**

**(b) Bonds or other obligations issued under this section:**

- (1) are payable solely from money provided by assessments collected under this chapter or other money legally available for that purpose; and**
- (2) may, in the discretion of the unit, be sold at a negotiated sale at a price to be determined by the unit or in accordance with IC 5-1-11.**

**(c) Leases entered into under this section:**

- (1) may be for a term not to exceed fifty (50) years;**
- (2) may provide for payments from revenues under this chapter, any other revenues available to the unit, or any combination of these sources;**
- (3) may provide that payments by the unit to the lessor are required only to the extent and only for the time that the lessor is able to provide the leased facilities in accordance with the lease;**
- (4) must be based upon the value of the infrastructure leased; and**
- (5) may not create a debt of the unit for purposes of the Constitution of the State of Indiana.**

**(d) A lease may be entered into by the legislative body of the unit only after a public hearing at which all interested parties are provided the opportunity to be heard. After the public hearing, the legislative body may approve the execution of the lease on behalf of the unit only if the legislative body finds that the service to be provided throughout the life of the lease will serve the public purpose of the unit and is in the best interests of its residents.**

**(e) Upon execution of a lease under this section, the legislative**



body shall publish notice of the execution of the lease and the approval of the lease in accordance with IC 5-3-1.

(f) The legislative body of the unit may pledge money in the fund to pay bonds issued and lease payments or other obligations incurred by or on behalf of the unit or a public improvement area in the unit to provide the infrastructure described in an ordinance adopted under section 9 of this chapter.

(g) A pledge under subsection (f) is enforceable under IC 5-1-14-4.

Sec. 15. (a) With respect to any bonds, leases, or obligations for which a pledge has been made under section 14(f) of this chapter, the general assembly covenants with the holders of the bonds or obligations, or the lessor under any lease and its bondholders, that this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the assessments imposed under this chapter if any of the bonds or obligations is outstanding or any lease remains unpaid.

(b) With respect to any bonds, leases, loans, or obligations for which a pledge has been made under section 14(f) of this chapter, the legislative body of the unit may not amend or repeal an ordinance adopted under this chapter in a manner that will adversely affect the imposition or collection of the assessments imposed under this chapter if any of the bonds or obligations is outstanding or any lease remains unpaid.

Sec. 16. (a) Any owner of real property in a public improvement area may file an action contesting the validity of an ordinance adopted under section 9 of this chapter.

(b) An action under subsection (a) must be filed in the circuit or superior court of the county in which a majority of the public improvement area is located not later than twenty (20) days after adoption of the ordinance.

(c) An action to contest the validity of bonds issued or leases entered into under this chapter must be brought in a circuit or superior court in the county in which a majority of the public improvement area is located not later than fifteen (15) days after the adoption of a bond ordinance or publication of the notice of the execution and approval of the lease, as the case may be.

Sec. 17. This chapter shall be construed liberally and is in addition and supplemental to the powers conferred on a unit by any other law. A unit may finance and develop infrastructure as defined under this chapter in accordance with any other statute that authorizes or permits the financing of such infrastructure.



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1        **SECTION 2. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1316, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEVENSON, Chair

Committee Vote: yeas 11, nays 0.

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